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Our Case No. 659/691
K-C Ref. No. 16,056

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

. In re Application of:)
Newman et al.)
Serial No. 09/659,307) Examiner Rivera
Filing Date: September 12, 2000) Group Art Unit No. 3654
For MOUNTING SYSTEM FOR A WET)
WIPES DISPENSER)

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GROUP 3600

APPELLANTS' BRIEF

Assistant Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

This is an appeal from the Advisory Action dated October 7, 2003 and of the Final Rejection dated June 4, 2003, of Claims 15-45, all the claims pending herein.

(1) REAL PARTY IN INTEREST

The present application is owned by Kimberly-Clark Worldwide, Inc.

(2) RELATED APPEALS AND INTERFERENCES

There are no known appeals or interferences, which will directly affect or be directly affected by or have a bearing on this appeal.

(3) STATUS OF CLAIMS

Claims 15-45 are pending herein, and all are appealed.

(4) STATUS OF AMENDMENTS

The pending claims have been subjected to restriction and/or election. The first Office Action, mailed July 16, 2002 [Paper No. 11] indicated that claims 1-94 were restricted into three separate inventions, claims 1-14, claims 15-45, and claims 46-94. In Appellants' Response to Restriction/Election Requirement, mailed August 16, 2002, Appellants elected Group II, claims 15-45, for prosecution on the merits and allowing claims 1-14 and 46-94 to be withdrawn from consideration [Paper No. 12].

An Amendment and Request for Reconsideration was filed on March 21, 2003 after Non-Final Rejection [Paper No. 13]. A Final Rejection [Paper No. 16] was issued on June 4, 2003 to which a Request for Reconsideration was filed on October 2, 2003. The Advisory Action of October 7, 2003 [Paper No. 19] indicates that the Appellants' arguments were considered, however the claims were not amended in this request. Thus, the claims are in the form as referred to in the Final Rejection of June 4, 2003. A clean copy of the claims is attached as Appendix A.

(5) SUMMARY OF INVENTION

In an embodiment of the invention, there is provided a dispensing system for dispensing wet wipes (p.6, lines 28-31) wherein the dispensing system includes a dispenser (p.9, line 8), wet wipes having a length and a width (p.9, line 14), and a gap (p.9, lines 16-17) allowing for dispensing of the wet wipes. The dispenser and wet wipes together having a dispensing force (p.21, line 27 to p.22, line 8), and the wet wipes have a tensile strength which is at least twice that of the dispensing force (p.2, lines 23-24 and p.29, lines 22-26). Preferably, the tensile strength is at least five times that of the dispensing force (p.2, line 24), more preferably at least seven times that of the dispensing force (p.2, line 25).

In another embodiment of the invention, there is provided a dispensing system for dispensing wet wipes (p.6, lines 28-31) including a dispenser (p.9, line 8), wet wipes having perforations (p.17, lines 12-15), and a gap (p.9, lines 16-17) allowing for dispensing of the wet wipes. The dispenser and wet wipes together have a dispensing force (p.21, line 27 to p.22, line 8) and the wet wipes have a detach strength which is at least twice that of the dispensing force (p.27, lines 2-10). Preferably, the detach strength is at least five times that of the dispensing force (p.3, lines 8-10), more preferably at least seven times that of the dispensing force (p.3, line 10).

The wipes have a tensile strength along their length of at least 300 g/inch (p.2, lines 25-26), preferably between about 300 g/inch and 600 g/inch (p.2, lines 26-27). The wipes have a tensile strength along their width of at least 250 g/inch (p.2, lines 27-28), preferably between about 250 g/inch and 500 g/inch (p.2, lines 28-29). The wipes have a peel force between about 18 and 50 g/inch (p.2, lines 29-30), preferably between about 20 and 40 g/inch (p.2, line 30). The dispensing force is between about 20 and 150 g/inch (p.2, lines 30-31), preferably between about 30 and 60 g/inch (p.2, line 31), more preferably less than about 47 g/inch (p.3, line 1).

The wipes are preferably configured in a roll (p. 17, lines 8-32). Preferably, the wipes are configured in a coreless roll and comprise perforations (p.17, lines 12-15). The perforations may be characterized by a bond length of 0.01 inches, a cut length of 0.03 inches, and a bond spacing of 0.04 inches (p. 18, lines 10-18). The perforations may be characterized by a bond length of 0.02 inches, a cut length of 0.05 inches, and

a bond spacing of 0.07 inches (p. 18, lines 15-16). The perforations may be characterized by a bond length of 0.04 inches, a cut length of 0.09 inches, and a bond spacing of 0.13 inches (p. 18, lines 17-18).

(6) ISSUES

- 1. Whether Claims 15, 28, 30-32, and 34-35 are anticipated under 35 USC § 102(b) by U.S. Patent No. 3,592,161 to Hoffman.**
- 2. Whether Claims 16-27 and 36-45 are obvious under 35 USC § 103(a) over Hoffman.**
- 3. Whether Claims 29 and 33 are obvious under 35 USC § 103(a) over Hoffmann in view of U.S. Patent No. 5,620,148 to Mitchell.**

(7) GROUPING OF CLAIMS

For the purposes of this appeal the claims stand or fall together.

(8) ARGUMENT

1. Description of the present invention

Appellants have developed a dispensing system for dispensing wet products, such as wet wipes. The dispensing system includes a mountable dispenser with a gap and a plurality of wet wipes which are preferably configured in a perforated roll. It has been discovered that using the proper ratios of dispensing force to tensile strength or to detach strength enables the user to easily remove the intended amount of wet product from the dispenser. The pending claims specify the various force and strength ratios that provide this improvement in the dispensing of wet wipes.

The "dispensing force" is a characteristic of the dispenser and wet wipes together and is defined as:

... the force to pull the wet wipes from the dispenser.
[p. 21, lines 27-28]

The dispenser contributes to this force through any contact between the dispenser and the wet wipes. For example, contact between the wet wipes and the cover of the dispenser, between the wet wipes and a wiper or wiper blade, and/or between the wet wipes and the tray can contribute to the dispensing force (see for example p. 13, lines 1-14 and p. 29, line 22 through p. 30, line 6). In addition, the peel force of the wet wipes can also contribute to the dispensing force (see for example p. 21, lines 11-26; p. 27, lines 11-16; and Claim 22). A proper ratio between the dispensing force and the tensile strength and/or detach strength of the wet wipe is an important characteristic of the claimed invention.

The tensile strength of a wet wipe can either be measured in the machine direction (MD) or in cross direction (CD) as described in the specification (p.19, lines 5-19). The MD tensile is the peak load before failure per inch width of the sample, as determined in the machine direction (p.19, lines 5-6). The CD tensile is the peak load before failure per inch width of the sample, as determined in the cross direction (p.19, lines 6-7). In order that the wet wipes may be properly dispensed from the gap in the dispenser, the tensile strength should be between twice and five times, and preferably about seven times that of the dispensing force. Wipes having a tensile strength greater than the dispensing force (i.e. at least twice as large) can be pulled from the dispenser through the gap without inadvertently breaking the wipe. Thus, a wet wipe of the desired length can be removed by the user.

The detach strength is defined as “the force required to break a perforation” and is measured as described in the specification (p.19, line 20 – p.20, line 22). According to the specification, it is desirable for the dispensing force to be:

... considerably less than the detach force for a roll of perforated wipes. In this way it is assured that the wipes will be able to be pulled from, or removed from, the dispenser without inadvertently breaking the perforation.
[page 27, lines 2-10]

In order that the wet wipes may be properly dispensed from the gap in the dispenser, the detach strength should be between twice and five times, and preferably about seven times that of the dispensing force. Wipes having a detach strength greater than the dispensing force (i.e. at least twice as large) can be pulled from the dispenser through the gap without inadvertently breaking the wipe. Thus, a perforated wet wipe of the desired length can be removed by the user.

2. Claims 15, 28, 30-32, and 34-35 are not anticipated by U.S. Patent No. 3,592,161 to Hoffman.

Claims 15, 28, 30-32, and 34-35 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hoffman (U.S. Pat. No. 3,592,161). Hoffman, however, does not disclose each and every element of the claims. Claims 15, 28, 30-32, and 34-35 all recite a dispenser and wet wipes, which together have a dispensing force such that the tensile strength or detach strength of the wet wipes is at least twice that of the dispensing force. Furthermore, claims 30-32 and 34-35 recite wet wipes that include perforated sheets. Hoffman does not disclose a wet wipes dispensing system with a dispensing force, nor does Hoffman disclose wet wipes having a tensile strength or detach strength which is at least twice that of the dispensing force and having perforations.

Although the Examiner has asserted that these features are taught in Hoffman, the Examiner made no correlation between these features and the actual disclosure of Hoffman. Not only does Hoffman fail to disclose these claim elements, but there is nothing in Hoffman, nor has the Examiner asserted that there is anything in Hoffman, that inherently discloses or that would teach or suggest these claim elements. In fact, in the fourth paragraph on page three of the Office Action [Paper No. 16], the Examiner acknowledges that “Hoffman does not mention the specific strengths involved with the wet wipes.” Indeed, Hoffman does not mention any strengths at all, whether tensile or detach strength, much less their magnitudes relative to the overall dispensing force. The Examiner has tacitly acknowledged that Hoffman does not teach perforations in the wet wipes, which are included in the dispensing system, in that page 4 of Paper No. 16 asserts that perforations are “old and well known.”

Rather than providing evidence that Hoffman explicitly or inherently discloses the claimed ratios of dispensing force to tensile strength or detach strength, the Examiner has presented obviousness arguments in the anticipation rejection. Specifically, the Examiner has asserted that, "with respect to the forces, it is not beyond one of ordinary skill in the art to know that such forces are dependent upon how the user pulls the web from the dispenser. As such it would have been obvious to one of ordinary skill in the art to make the web strong enough to withstand the pull of any user." [Paper No. 16, p. 4].

Applicants submit that it would be neither inherent nor obvious to provide a dispenser and wet wipes which together have a dispensing force such that the tensile strength or detach strength of the wet wipes is at least twice that of the dispensing force. The material properties of wet wipes can contribute both to the dispensing force and also to the tensile strength or detach strength. Both the dispensing force and the tensile/detach strength can vary as the composition and structure of the wet wipes are adjusted. Thus, it does not necessarily follow that the dispensing force can be changed independently of the tensile/detach strength so as to provide for straightforward optimization of these ratios. For example, the material properties of wet wipes can vary relative to the amount of moisture and the type of salt used in the roll of wipes. A component of the dispensing force is the peel force of the web, which is the amount of force in grams/4.25 inches required to unroll a roll of wet wipes [p. 21, l.11-13]. The peel force of different web structures is variable depending upon the salt and moisture present, therefore changing the adhesive forces that are present in the dispensing system. As the peel forces change, so do the dispensing forces. However, changes in the salt and moisture parameters can also cause changes in the tensile or detach strengths. In addition, the composition of the wet wipes can affect the interaction of the wipes with the dispenser and the gap, leading to further variation in the dispensing force. The Examiner has not provided any evidence that one could reasonably expect that routine experimentation could provide the claimed ratios of dispensing force to tensile strength or to detach strength.

It is fundamental that, to anticipate a claimed invention, each and every element of that claim must be found in the prior art reference. Indeed, *Verdegall Bros. v. Union*

Oil Co., 814 F.2d 628, 631 (Fed.Cir. 1987) states that a “claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference.” The Examiner has failed to put forth a reference that teaches each and every claim element, either expressly or inherently.

Hoffman does not disclose each and every element of the claims, nor has the Examiner shown that Hoffman inherently discloses any of the claim elements. Accordingly, a proper *prima facie* case of anticipation of claims 15, 28, 30-32, and 34-35 by Hoffman has not been made, and as such, the present claims are not anticipated under 35 U.S.C. § 102(b) by Hoffman.

3. Claims 16-27 and 36-45 are not obvious over Hoffman.

Claims 16-27 and 36-45 have been rejected under 35 U.S.C. § 103(a) as being obvious over Hoffman. Hoffman, however, does not teach or suggest each and every element of Appellants’ claims, nor have these missing elements been supplied by another reference or by any other evidence. The Examiner has asserted that Hoffman discloses the dispenser as recited in independent claims 15 and 31, and that the properties of the wet wipes recited in claims 16-27 and 36-45 would have been an obvious matter of design choice, routine experimentation and optimization. Paper No. 16 at page 3. Moreover, the Examiner has asserted that while Hoffman does not mention the specific strengths involved with the wet wipes, it would have been an obvious matter of design choice to dimension the wet wipes of Hoffman as specified in each of the claims.

Claims 16-27 and 39-45 recite specific strengths related to the dispensing system. These strengths include detach strength, peel strength, tensile strength and their relation to dispensing forces. Claims 36-38 further recite a wet wipe roll including perforations. In contrast, Hoffman does not teach or suggest a dispensing system with a wet wipe web having a tensile or detach strength at least twice that of the dispensing force. The Examiner has not set forth any characterizations of Hoffman that would provide for such strength relationships. Instead, the Examiner merely asserted that it would have been an obvious matter of design choice to include the claimed tensile strengths and wet wipe dimensions [Paper No. 16 at p. 3]. However, such an assertion

is not supported by the record because the Examiner has failed to provide any basis for obviousness other than the Examiner's own assertions.

The conclusory statements presented regarding obvious design choices of one skilled in the art are insufficient to establish a *prima facie* case of obviousness. The Examiner has failed to address Applicants arguments regarding this issue in the prior request for consideration, filed March 21, 2003 [Paper No. 15]. In that response Applicants pointed out that the MPEP 2143.01 states that, with reference to *Ex parte Levingood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993):

A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is **not sufficient** to establish a *prima facie* case of obviousness without some **objective reason to combine** the teachings of the references. [Bold emphasis added]

The Examiner has not yet addressed this policy of the USPTO and has not provided any evidence of a motivation or suggestion to modify the reference, either from statements in the references themselves or from other documentary evidence on the record. Thus, the conclusory statement of obviousness "to one of ordinary skill in the art" would be insufficient to establish a *prima facie* case of obviousness under 35 U.S.C. § 103, even if the applied references disclosed each and every element of the claims.

Hoffman does not teach or suggest each and every element of the claims 16-27 and 36-45, and the Examiner has failed to show that it would have been obvious to modify Hoffman to provide the dispensing systems of the claims. Accordingly, a proper *prima facie* case of obviousness has not been made, and as such, the present claims are not obvious under 35 U.S.C. § 103(a) over Hoffman.

4. Claims 29 and 33 are not obvious over Hoffmann in view of U.S. Patent No. 5,620,148 to Mitchell.

Claims 29 and 33 were rejected under 35 U.S.C. § 103(a) as being obvious over Hoffman in view of Mitchell (U.S. Pat. No. 5,620,148). The Examiner has asserted that it would be obvious to combine the dispenser of Hoffman with the coreless roll of Mitchell because more product can be provided in the space that would otherwise have been occupied by the core. The combination of Mitchell and Hoffman, however, fails to teach or suggest each and every element of the claimed invention and therefore, is insufficient to create a *prima facie* case of obviousness.

The combination of Hoffman and Mitchell, even if proper, would fail to provide all of the elements of claims 29 and 33. As noted above, Hoffman does not teach or suggest a dispensing system with a roll of wet wipes having a tensile strength or detach strength at least twice that of the dispensing force. Likewise, Mitchell does not teach or suggest, nor has the Examiner asserted that Mitchell teaches or suggests, a dispensing system with a roll of wet wipes having a tensile strength or detach strength at least twice that of the dispensing force. Although Mitchell discloses a coreless roll of wipes, the reference fails to provide the teaching or suggestion of strengths and forces that is lacking in Hoffman.

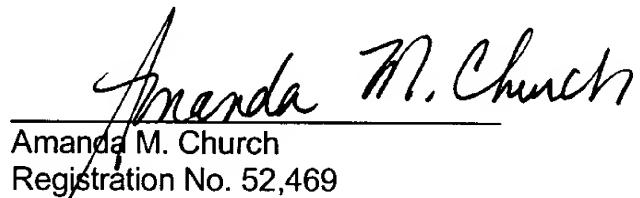
Hoffman and Mitchell, alone or in combination, do not teach or suggest each and every element of claims 29 and 33. Accordingly, a *prima facie* case of obviousness has not been presented, and claims 29 and 33 are not obvious under 35 U.S.C. § 103 over Hoffman in view of Mitchell.

5. Conclusion

The cited references, either alone or in combination, do not provide a valid basis for a *prima facie* anticipation or obviousness rejection of the present claims.

Accordingly, Appellants submit that the present invention is fully patentable over Hoffman and Mitchell, alone or in combination, and the Examiner's rejection should be REVERSED.

Respectfully submitted,


Amanda M. Church
Amanda M. Church
Registration No. 52,469

Jonathan P. Taylor, Ph.D.
Registration No. 48,338
Representatives for Appellants

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, ILLINOIS 60610
(312) 321-4200

APPENDIX

15. A dispensing system for dispensing wet wipes comprising:
 - a dispenser;
 - wet wipes, the wet wipes having a length and a width; and
 - a gap, the gap allowing for dispensing of the wet wipes;
 - the dispenser and wet wipes together having a dispensing force, and the wet wipes having a tensile strength which is at least twice that of the dispensing force.
16. The dispensing system of claim 15, wherein the wet wipes have a tensile strength at least five times that of the dispensing force.
17. The dispensing system of claim 15, wherein the wet wipes have a tensile strength at least seven times that of the dispensing force.
18. The dispensing system of claim 15, wherein the wet wipes have a tensile strength along the length of at least 300 g/in.
19. The dispensing system of claim 15, wherein the wet wipes have a tensile strength along the length between about 300 and 600 g/in.
20. The dispensing system of claim 15, wherein the wet wipes have a tensile strength along the width of at least 250 g/in.
21. The dispensing system of claim 15, wherein the wet wipes have a tensile strength along the width of between about 250 and 500 g/in.
22. The dispensing system of claim 15, wherein the wet wipes have a peel force, the peel force contributing to the dispensing force.
23. The dispensing system of claim 15, wherein the wet wipes have a peel force between about 18 and 70 g/in.
24. The dispensing system of claim 15, wherein the wet wipes have a peel force between about 20 and 40 g/in.

25. The dispensing system of claim 15, wherein the dispenser contributes to the dispensing force such that the dispensing force is between about 20 and 150 g/in.

26. The dispensing system of claim 15, wherein the dispenser contributes to the dispensing force such that the dispensing force is between about 30 and 60 g/in.

27. The dispensing system of claim 15, wherein the dispenser contributes to the dispensing force such that the dispensing force is less than about 47 g/in.

28. The dispensing system of claim 15, wherein the wet wipes are configured in a roll.

29. The dispensing system of claim 15, wherein the wet wipes are configured in a roll, the roll being coreless.

30. The dispensing system of claim 15, wherein the wet wipes comprise perforations.

31. A dispensing system for dispensing wet wipes comprising:
a dispenser;
wet wipes, the wet wipes having perforations; and
a gap, the gap allowing for dispensing of the wet wipes;
the dispenser and wet wipes together having a dispensing force, and the wet wipes having a detach strength which is at least twice that of the dispensing force.

32. The dispensing system of claim 31, wherein the wet wipes are configured in a roll.

33. The dispensing system of claim 31, wherein the wet wipes are configured in a roll, the roll being coreless.

34. The dispensing system of claim 31, wherein the wet wipes comprise perforated sheets.

35. The dispensing system of claim 31, wherein the wet wipes have perforations, the perforations having a bond length, a cut length, and a bond spacing.

36. The dispensing system of claim 31, wherein the wet wipes have perforations, the perforations having a bond length of 0.01 inches, a cut length of 0.03 inches, and a bond spacing of 0.04 inches.

37. The dispensing system of claim 31, wherein the wet wipes have perforations, the perforations having a bond length of 0.02 inches, a cut length of 0.05 inches, and a bond spacing of 0.07 inches.

38. The dispensing system of claim 31, wherein the wet wipes have perforations, the perforations having a bond length of 0.04 inches, a cut length of 0.09 inches, and a bond spacing of 0.13 inches.

39. The dispensing system of claim 31, wherein the wet wipes have a detach strength at least five times that of the dispensing force.

40. The dispensing system of claim 31, wherein the wet wipes have a detach strength at least seven times that of the dispensing force.

41. The dispensing system of claim 31, wherein the wet wipes have a tensile strength along the length of at least 300 g/in.

42. The dispensing system of claim 31, wherein the wet wipes have a tensile strength along the length between about 350 and 500 g/in.

43. The dispensing system of claim 31, wherein the dispenser contributes to the dispensing force such that the dispensing force is between about 20 and 150 g/in.

44. The dispensing system of claim 31, wherein the dispenser contributes to the dispensing force such that the dispensing force is between about 30 and 60 g/in.

45. The dispensing system of claim 31, wherein the dispenser contributes to the dispensing force such that the dispensing force is less than about 47 g/in.